

08/432280


**UNITED STATES DEPARTMENT OF COMMERCE  
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EXAMINER

REILLY, L.

PC417/1221

ART UNIT

PAPER NUMBER

7

3302

DATE MAILED:

12/21/95

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 This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 10-26-95 ☐ This action is made final.

 A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133
**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____   |

**Part II SUMMARY OF ACTION**

- 1.
- ☒
- Claims
- 1-26
- are pending in the application.

Of the above, claims 25 & 26 are withdrawn from consideration.

- 2.
- ☐
- Claims \_\_\_\_\_ have been cancelled.

- 3.
- ☐
- Claims \_\_\_\_\_ are allowed.

- 4.
- ☒
- Claims
- 1-24
- are rejected.

- 5.
- ☐
- Claims \_\_\_\_\_ are objected to.

- 6.
- ☐
- Claims \_\_\_\_\_ are subject to restriction or election requirement.

- 7.
- ☐
- This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

- 8.
- ☐
- Formal drawings are required in response to this Office action.

- 9.
- ☐
- The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are
- ☐
- acceptable;
- ☐
- not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

- 10.
- ☐
- The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been
- ☐
- approved by the examiner;
- ☐
- disapproved by the examiner (see explanation).

- 11.
- ☐
- The proposed drawing correction, filed \_\_\_\_\_, has been
- ☐
- approved;
- ☐
- disapproved (see explanation).

- 12.
- ☐
- Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has
- ☐
- been received
- ☐
- not been received
- ☐
- been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

- 13.
- ☐
- Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

- 14.
- ☐
- Other

**EXAMINER'S ACTION**

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### **Withdrawal of Non-elected Claims**

Claims 25 and 26 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. 37 C.F.R. § 1.142(b). Election was made **without** traverse in Paper No. 3.

### **Objections to the Specification and Claims**

The specification and claims are replete with grammatical errors too numerous to mention specifically. The specification should be revised carefully.

### **Rejections Under 35 U.S.C. § 112, first paragraph**

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to disclose an adequate written description of the invention as claim.

The specification fails to disclose a treadmill having "an adjustable impact absorption means".

Claim 16 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

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**Rejections Under 35 U.S.C. § 112, second paragraph**

Claims 1-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, in lines 7 and 9 the phrase "the treadmill" lacks positive antecedent basis and should be -the treadmill means-. Applicant is reminded that consistent terminology must be used throughout the claims. Claims 2, 19 and 24 depend from claim 1 and likewise is indefinite.

In regard to claim 3, in lines 7, 9, and 11 the phrase "the treadmill" lacks positive antecedent basis and should be -the treadmill means-. Claims 4-24 depend from claim 3 and likewise are indefinite. Throughout all of the depend claims either the terminology "the treadmill" or the terminology "the treadmill means" should be used to avoid confusion.

In regard to claims 7, 10, and 13, in line 2 the phrase "at a desired rate of flow" renders the metes and bounds of the invention indefinite as it is unclear what rates are and what rates are not "desired".

In regard to claims 17, 21, and 24, the use of the terminology "desired" throughout these claims renders the metes and bounds of the claims indefinite. Claims 18-20 depend from

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claim 17 and likewise are indefinite. Claims 22 and 23 depend from claim 21 and likewise are indefinite.

### **Rejections Under 35 U.S.C. § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Leonaggeo, Jr.

In regard to claim 1, Leonaggeo, Jr. discloses an apparatus comprising: a tank (10) for retaining fluid, said tank having a front end, a back end, a top near the fluid top when filled with fluid, and a bottom between the two ends; treadmill means (24) in said tank having driving means (42) for rotating the treadmill means and having means (not shown) for adjusting the speed of rotation; and means (70) for lifting the treadmill means in the tank from one end of the tank.

As to claim 2, Leonaggeo, Jr. discloses treadmill driving means that operates in conjunction with the end lift means.

As to claim 19, Leonaggeo, Jr. discloses an end lift means comprising a flexible linkage (Fig. 4) having two ends, one of which is located at the end of the treadmill means and the other of which is located near the bottom of the tank.

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### Rejections Under 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 3-7, 10, 13, and 19 are rejected under 35 U.S.C.

§ 103 as being unpatentable over Leonaggeo, Jr.

In regard to claim 3, Leonaggeo, Jr. discloses an apparatus comprising: a tank (10) for retaining fluid, said tank having a front end, a back end, a top near the fluid top when filled with fluid, and a bottom between the two ends; treadmill means (24) in said tank having driving means (42) for rotating the treadmill means, said driving means having at least one flexible linkage having two ends about which the linkage rotates; and means (70) for lifting the treadmill means in the tank said means having at least two rigid supporting members (78) pivotally connected at a pivot point. Leonaggeo, Jr. fails to disclose a treadmill

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driving means that rotates about the pivot point; however, the treadmill driving means and means for lifting disclosed by Leonaggeo, Jr. perform the same function in the same environment as the treadmill driving means and means for lifting of the instant invention. In the absence of criticality the placement of the treadmill driving means is deemed to be a design consideration within the skill of the art.

As to claim 4, Leonaggeo, Jr. discloses means for lifting the treadmill means in the tank that are located at one end of the tank.

As to claim 5, Leonaggeo, Jr. discloses treadmill means having means for adjusting the speed of the rotation of movement if the treadmill means.

As to claim 6, Leonaggeo, Jr. discloses treadmill means having means for adjusting the speed of the rotation of movement if the treadmill means.

As to claim 7, Leonaggeo, Jr. discloses a plurality of jet nozzles (200) through which water flows into the tank.

As to claim 10, Leonaggeo, Jr. discloses a plurality of jet nozzles (200) through which water flows into the tank.

As to claim 13, Leonaggeo, Jr. discloses a plurality of jet nozzles (200) through which water flows into the tank.

As to claim 19, Leonaggeo, Jr. discloses an end lift means comprising a flexible linkage (Fig. 4) having two ends, one of

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which is located at the end of the treadmill means and the other of which is located near the bottom of the tank.

Claims 8, 9, 11, 12, 14, 15, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Leonaggeo Jr. in view of Crandell.

As to claim 8, Leonaggeo, Jr. does not address the provision of a means for adjusting the water flow rate through the nozzles; however Leonaggeo, Jr. discloses that the nozzles used are conventional nozzles. Crandell teaches conventional nozzles for use in an underwater treadmill apparatus having means (62) for adjusting the water flow rate through the nozzles. It would have been obvious to one of ordinary skill in the art to use the conventional nozzles having means for adjusting the water flow rate through the nozzles taught by Crandell in the apparatus disclosed by Leonaggeo, Jr. as such practice is conventional in the art.

As to claim 9, Crandell teaches a means for controlling the water flow rate comprising a water pump (40) pumping at a rate responsive to and determined by electrical power and further having means for adjusting said power to the water pump.

As to claim 11, Leonaggeo, Jr. does not address the provision of a means for adjusting the water flow rate through the nozzles; however Leonaggeo, Jr. discloses that the nozzles used are conventional nozzles. Crandell teaches conventional

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nozzles for use in an underwater treadmill apparatus having means (62) for adjusting the water flow rate through the nozzles. It would have been obvious to one of ordinary skill in the art to use the conventional nozzles having means for adjusting the water flow rate through the nozzles taught by Crandell in the apparatus disclosed by Leonaggeo, Jr. as such practice is conventional in the art.

As to claim 12, Crandell teaches a means for controlling the water flow rate comprising a water pump (40) pumping at a rate responsive to and determined by electrical power and further having means for adjusting said power to the water pump.

As to claim 14, Leonaggeo, Jr. does not address the provision of a means for adjusting the water flow rate through the nozzles; however Leonaggeo, Jr. discloses that the nozzles used are conventional nozzles. Crandell teaches conventional nozzles for use in an underwater treadmill apparatus having means (62) for adjusting the water flow rate through the nozzles. It would have been obvious to one of ordinary skill in the art to use the conventional nozzles having means for adjusting the water flow rate through the nozzles taught by Crandell in the apparatus disclosed by Leonaggeo, Jr. as such practice is conventional in the art.

As to claim 15, Crandell teaches a means for controlling the water flow rate comprising a water pump (40) pumping at a rate



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responsive to and determined by electrical power and further having means for adjusting said power to the water pump.

As to claim 19, Leonaggeo, Jr. discloses an end lift means comprising a flexible linkage (Fig. 4) having two ends, one of which is located at the end of the treadmill means and the other of which is located near the bottom of the tank.

Claims 17-24 are rejected under 35 U.S.C. § 103 as being unpatentable over Leonaggeo, Jr. in view of Keller et al. and Potash et al.

As to claim 17, Leonaggeo, Jr. does not address the specifics of the controls for the apparatus. Keller et al. teaches that controls including means for monitoring the speed of the treadmill means (81), means for monitoring the chemical requirements of the water (85), means for adjusting the chemical requirements of the water (85), means for monitoring the rate of water flow (V3,V5) and means for electronically adjusting the same are conventional controls for use on an underwater treadmill apparatus. It would have been obvious to one of ordinary skill in the art to use the same kind of controls taught by Keller et al. for the controls of Leonaggeo, Jr. as such practice is conventional in the art. Keller et al. does not teach the use of a microprocessor having memory; however, Potash et al. teaches that the use of microprocessors having memory is conventional in the art.

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As to claim 18, Potash et al. teaches the use of infrared remote control means for operating the microprocessor control system.

As to claim 19, Leonaggeo, Jr. discloses an end lift means comprising a flexible linkage (Fig. 4) having two ends, one of which is located at the end of the treadmill means and the other of which is located near the bottom of the tank.

As to claim 20, Keller et al. teaches the use of emergency stop means near the top of the tank accessible for the user to instantly stop all operating functions of the apparatus.

As to claim 21, Potash et al. teaches means for sensing the system status and sending corresponding electrical signals representing said respective status signals, means for electrically isolating the sensing means from the microprocessor control means, means electrically connected to the microprocessor for storing said electrical status signals, lout means connected to the microprocessor for sending electrical control signals, means for effecting the system status in response to the electrical control signals, and means for isolating the electrical sending means from the means for effecting the system status.

As to claim 22, Potash et al. teaches electrical isolation means for converting the electrical signals to lightwave

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frequency signals; and means for receiving said lightwave frequency signals and converting same back to electrical signals.

As to claim 23, Potash et al. fails to teach means for converting the electrical signals into magnetic signals; however, in view of Applicant's admissions on page 13, the means for converting electrical signals to lightwave frequency signals are deemed to be mechanical equivalents of the means for converting the electrical signals into magnetic signals.


As to claim 24, Leonaggeo, Jr. discloses an end lift means comprising a flexible linkage having two ends, one of which is located at the end of the treadmill and the other of which is located near the bottom of the tank. Potash et al. teaches means for sensing system status and sending corresponding electrical signals representing said respective status signals, means for electrically isolating the sensing means from the microprocessor control means, means electrically connected to the microprocessor for storing said electrical status signals, lout means connected to the microprocessor for sending electrical control signals, means for effecting the system status in response to the electrical control signals, and means for isolating the electrical sending means from the means for effecting the system status.

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Any inquiry concerning this communication should be directed to Lynne A. Reichard at telephone number (703) 308-1159. Additionally, any facsimile transmissions concerning this application should be directed to Lynne A. Reichard at fax number (703) 308-2864.

  
**LYNNE A. REICHARD**  
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L. Reichard  
December 13, 1995